

**IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE

BIG A LLC,

Respondent,

v.

LINDWORTH INVESTMENTS, LLC, et al.,

Appellants.

DOCKET NUMBER WD77400

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: November 12, 2014

APPEAL FROM

The Circuit Court of Pettis County, Missouri
The Honorable Robert L. Koffman, Judge

JUDGES

Division II: Howard, P.J., and Pfeiffer and Witt, JJ.

CONCURRING.

ATTORNEYS

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Attorney for Respondent,

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Attorney for Appellants.



MISSOURI APPELLATE COURT OPINION SUMMARY MISSOURI COURT OF APPEALS, WESTERN DISTRICT

BIG A LLC,

Respondent,

v.

LINDWORTH INVESTMENTS, LLC,
et al.,

Appellants.

OPINION FILED:
November 12, 2014

WD77400

Pettis County

Before Division II Judges:

Victor C. Howard, Presiding Judge, and Mark D. Pfeiffer
and Gary D. Witt, Judges

Lindworth Investments, LLC, and Paul Vogel appeal the summary judgment granted by the Circuit Court of Pettis County, Missouri, in favor of Big A, LLC. On appeal, Lindworth and Vogel claim that the trial court erred in granting summary judgment to Big A because section 432.040 RSMo does not apply to the fraudulent misrepresentations that Lindworth and Vogel allege to have been made by Big A's predecessor in interest and upon which Lindworth and Vogel relied in executing promissory notes that were the subject of Big A's lawsuit.

REVERSED AND REMANDED.

Division II holds:

The plain language of section 432.040, which is in the nature of a statute of frauds, limits its application to any "action" brought by any person. However, the oral fraudulent misrepresentations alleged by Lindworth and Vogel were not part of any "action" brought by them; they were affirmative defenses to Big A's action. In addition, section 432.040 has been held to apply only to such cases wherein the purpose of the representation is to enable a third person to obtain credit, which was not the case here.

Opinion by: Mark D. Pfeiffer, Judge

November 12, 2014

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